

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
COLUMBIA DIVISION**

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**JIMMY W. McMASTERS,**

**Plaintiff,**

**v.**

**AVIAGEN NORTH AMERICAN, INC.  
and CHRISTOPHER R. GREEN,**

**Defendants.**

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) **Civil Action No.**  
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**NOTICE OF REMOVAL OF CIVIL ACTION**

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Defendant, Aviagen North American, Inc. (hereinafter "Aviagen" or "Defendant"), by and through counsel, comes now, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and states as follows for its Notice of Removal of this action from the Circuit Court for Lawrence County, Tennessee at Lawrenceburg to the United States District Court for the Middle District of Tennessee, Columbia Division.

**STATEMENT OF THE CASE**

1. On August 17, 2017, Plaintiff, Jimmy W. McMasters (hereinafter "Plaintiff") filed a Complaint in the Circuit Court for Lawrence County, Tennessee at Lawrenceburg, case number 3162-17 (hereinafter "State Court Action"). A copy of the Complaint, along with the Summons, in said action is attached hereto as Exhibit A in accordance with 28 U.S.C. § 1446(a).

2. Defendant Aviagen was served with the Summons and Complaint on or about August 28, 2017.

3. Upon information and belief, Defendant Christopher R. Green has not been served with the Summons and Complaint as of the date of filing this Notice of Removal.

4. Since the filing of the Summons and Complaint, no further proceedings have taken place in the State Court Action.

5. The Complaint purports to assert causes of actions for personal injury premised upon the Defendants' alleged negligence, including alleged violations of Tennessee statutes, as it relates to a motor vehicle accident of December 23, 2016.

**DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)**

6. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the plaintiff and the defendants and more than \$75,000, exclusive of interests and costs, is at stake.

7. Plaintiff Jimmy McMasters alleges that he is a resident of Lawrence County, Tennessee.

8. Defendant Aviagen is presently, and was at the time the Complaint was filed, a corporation organized under the laws of the State of Delaware with its principal place of business located at 920 Explorer Boulevard NW, Huntsville, Alabama.

10. Upon information and belief, Defendant Christopher R. Green is presently, and was at the time the Complaint was filed, a resident of Elkmont, Limestone County, Alabama.

11. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Plaintiff seeks compensatory damages in a sum not less than \$595,000.00.

**ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED**

12. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the process, pleadings, orders, and documents from the State Court Action which have been served upon Defendant is being filed with this Notice of Removal.

13. This Notice of Removal has been filed within thirty (30) days of the date Defendant Aviagen was served with the Summons and Complaint in this matter. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the U.S. District Court for the Middle District of Tennessee, Columbia Division is the federal judicial district and division that encompasses the Circuit Court of Lawrence County, Tennessee where the State Court Action was originally filed.

**CONCLUSION**

Complete diversity existed between Plaintiff and Defendants at the time Plaintiff commenced the State Court Action and exists as of the filing of this Notice of Removal. The matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Accordingly, this Court has original jurisdiction over this action.

By this Notice of Removal, Defendant does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. Defendant intends no admission of fact, law or liability by this Notice, and expressly reserves all defenses, objections, motions and/or pleas.

Respectfully Submitted,

***GLASSMAN, WYATT, TUTTLE & COX, P.C.***

By: s/ Donald R. Babineaux  
Donald R. Babineaux (#027689)  
26 North Second Street  
Memphis, Tennessee 38103  
T: (901) 527-4673  
F: (901) 521-0940  
E: dbabineaux@gwtclaw.com  
GWTC File No. 17-260

*Attorney for Defendant,  
Aviagen North American, Inc.*

**CERTIFICATE OF SERVICE**

I, Donald R. Babineaux, hereby certify that on this the 27th day of September, 2017, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. A true and correct copy of the foregoing pleading has been served via United States Mail, postage prepaid upon the following:

Rocky McElhaney  
475 Saundersville Road, Suite 100  
Hendersonville, TN 37075

s/ Donald R. Babineaux  
Donald R. Babineaux

IN THE CIRCUIT COURT FOR LAWRENCE COUNTY, TENNESSEE  
AT LAWRENCEBURG



COPY

JIMMY W. McMASTERS,

Plaintiff,

v.

AVIAGEN NORTH AMERICAN, INC.  
and CHRISTOPHER R. GREEN,

Defendants.

CASE NO. 3162-17

JURY DEMAND

Filed for Record

AUG 17 2017

Circuit Court  
Lawrence County, TN

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COMPLAINT

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Comes now the Plaintiff, Jimmy McMasters, for his cause of action against the Defendants, Christopher Green and Aviagen North American, Incorporated, and respectfully states to the Court as follows:

1. At all relevant times, Plaintiff Jimmy McMasters was a resident of Lawrence County, Tennessee.
2. Upon information and belief, Defendant Aviagen North American is an international company with its North American headquarters address at 920 Explorer Boulevard Northwest, Huntsville, Alabama 35806.
3. Upon information and belief, Defendant Christopher R. Green is, and at all times relevant to this cause of action was, an employee of Defendant Aviagen North American operating within the scope of his duties.
4. Upon information and belief, Defendant Christopher R. Green is a citizen and resident of Limestone County, Alabama, with an address at 21647 Ashley Brook Way, Elkmont, Alabama 35620.



5. This is an action for personal injuries sustained by Jimmy McMasters as the result of a motor vehicle collision which occurred at approximately 11:15 a.m. on December 23, 2016, in Lawrence County, Tennessee.

6. Jurisdiction and venue are proper in this Court.

7. Immediately prior to the collision, Jimmy McMasters was traveling West on State Route 98 in his 1997 Nissan Frontier.

8. At the same time, Defendant Chris Green was traveling East on State Route 98 in a 2010 Ford F-250 while towing a commercial trailer.

9. As the two vehicles approached each other, traveling in opposite directions on two-lane State Route 98, Defendant Chris Green failed to maintain control of his vehicle and crossed over the double yellow lines in the center of the road and into Jimmy McMasters lane of travel. Defendant Chris Green's vehicle violently collided with Jimmy McMasters vehicle, sending it off of the road.

10. After the collision, Jimmy McMaster's vehicle looked like this:



11. Jimmy McMasters is not at fault for causing this collision.

12. The Defendants are 100% at fault for causing this collision.

13. As a result of this collision, Jimmy McMasters sustained and continues to suffer from severe injuries to his person including, but not limited to: second and third metatarsal fractures; fourth and fifth metatarsal neck fractures, angulation of the fourth metatarsal neck; damage to the proximal phalanx of his fourth and fifth toes; and changes in his midfoot that will, at some point, require fusion.

14. Defendant Chris Green was guilty of violating the following common law Rules of the Road which constitutes negligence, in that he:

- a. Failed to yield the right of way;
- b. Failed to maintain the vehicle under proper and reasonable control;
- c. Failed to drive in a reasonable and prudent manner with regard for the control of the vehicle and the traffic conditions on the roadway;
- d. Failed to see that which was there to be seen and take proper action with respect thereto; and
- e. Drove recklessly and carelessly.

15. Defendant Chris Green was negligent in violating the following statutes of the State of Tennessee, which were in full force and effect at the time and place of the collision, constituting negligence *per se*, in that he:

- a. Failed to exercise due care in violation of Tenn. Code Ann. §55-8-136; and
- b. Failed to yield the right of way in violation of Tenn. Code Ann. §55-8-120;

16. Defendant Aviagen North American's employee, Chris Green, was acting in the scope of his employment and as an agent and servant of Defendant Aviagen North American's at the time of the collision. Defendant Aviagen North American is liable for their agent's negligent acts and/or omissions under the doctrine of *respondeat superior*, agency principles, Tenn. Code Ann. § 55-10-311 and Tenn. Code Ann. § 55-10-312.

17. As a direct and proximate result of the Defendants' negligence, Jimmy McMasters has suffered the following damages:

- a. Physical injuries;
- b. Past medical expenses, to treat his injuries;
- c. Pain and suffering, past and future;
- d. Mental anguish, past and future;
- e. Future medical expenses, to treat his injuries;
- f. Loss of enjoyment of life, past and future;
- g. Lost wages;
- h. Loss of earning capacity;
- i. Permanent injury; and
- j. Disfigurement.

18. The Defendants' negligence and/or recklessness is the cause in fact and proximate cause of Plaintiff's injuries, losses and damages.

19. Defendant Aviagen North American has been properly served with process.

20. Defendant Chris Green has been properly served with process.

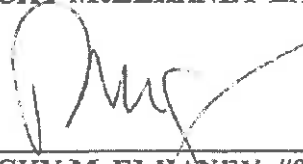


**WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:**

1. That service of process issue and be served upon the Defendants requiring them to appear and answer within the time required by law.
2. For a judgment against the Defendants, holding them liable for compensatory damages in an amount to be determined by the jury in this cause sufficient to adequately compensate the Plaintiff for his injuries and losses, but no less than \$595,000.00.
3. For the costs of this matter to be taxed to the Defendants.
4. For such other, further, and general relief to which the Plaintiff may be entitled from this Court, including court costs, discretionary costs, and post-judgment interest.
5. For a jury of twelve to try this cause.

**Respectfully submitted,**

**ROCKY McELHANEY LAW FIRM, P.C.**



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**ROCKY McELHANEY, #020205**  
**475 Saundersville Road**  
**Suite 100**  
**Hendersonville, Tennessee 37075**  
**Phone: (615) 932-8600**  
**Fax: (615) 425-2501**

**ATTORNEY FOR PLAINTIFF**

STATE OF TENNESSEE  
LAWRENCE COUNTY  
22<sup>nd</sup> JUDICIAL DISTRICT☒ First  
☐ Alias  
☐ Pluries

JIMMY W. MCMASTERS

CIVIL ACTION  
DOCKET NO. 3162-17

Plaintiffs

Vs.

AVIAGEN NORTH AMERICAN, INC. and

CHRISTOPHER R. GREEN

Defendants

## Method of Service:

- ☐ Lawrence County Sheriff  
☐ Out of County Sheriff  
☐ Secretary of State  
☒ Certified Mail  
☐ Personal Service  
☐ Commissioner of Insurance

To the above-named Defendant: Aviagen North American, Inc. through certified mail to Registered Agent: Cogency Global, Inc., Ste. B, 992 Davidson Drive, Nashville, Tennessee 37205.

You are summoned to appear and defend a civil action filed against you in the Circuit Court, 240 W. Gaines Street, Lawrenceburg, TN 38464, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED: 8-17-17

DEBBIE RIDDLE

Circuit Court Clerk  
Lawrence County, TennesseeBy: 

Deputy Clerk

ATTORNEY FOR PLAINTIFF

or

PLAINTIFF'S ADDRESS

ROCKY MCELHANEY, ESQ.

475 Saundersville Road, Suite 100

Address

Hendersonville, Tennessee 37075

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

DEBBIE RIDDLE

Circuit Court Clerk

Received this summons for service this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SHERIFF